

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARCEL WISZNIA AND WALTER WISZNIA,
d/b/a WISZNIA ASSOCIATES,

Plaintiffs,

vs.

Civ. No. 00-1184 LH/WWD

THE CITY OF ALBUQUERQUE, a
municipal corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiffs' Motion to Compel Discovery and Impose Sanctions Under Rule 37 [docket no. 38] filed July 2, 2001. Plaintiffs indicate that in a letter dated May 24, 2001, they sought to resolve a discovery impasse concerning the Defendant's failure to answer or respond with production to various interrogatories and requests for production. According to the Certificate of Service filed by the Defendant, service of Defendant's responses to Plaintiffs' Second Set of Interrogatories and Second Request for Production of Documents was made to Plaintiffs on May 9, 2001, thereby making a motion to compel, if any, due by May 29, 2001. The motion to compel was apparently served by mail on May 29, 2001.

Plaintiffs recite in their motion to compel that "[t]o date, the City has not responded to the letter [of May 24th]." According to Defendant, the May 24th letter arrived by facsimile at 5:19 p.m. on May 24, 2001. Counsel for the Defendant first saw the letter the next day, Friday morning, May 25, 2001. On May 29, 2001, the Tuesday following Memorial Day and the first business day of the following week, counsel for Plaintiffs hand delivered its motion to compel to counsel for

Defendant. Defendant asserts that Plaintiffs allowed the Defendant one business day to respond to its letter prior to serving its motion to compel.

D.N.M. LR-Civ. 7.2(a) reads in pertinent part as follows:

Movant must determine whether a motion is opposed (Emphasis supplied.)

The instant motion does not indicate whether opposing counsel was consulted as to opposition to the motion. Additionally, Plaintiffs' counsel has failed to follow the provisions of D.N.M.

D.N.M.-LR CIV. -Civ. 7.5(a) which reads in pertinent part as follows:

Movant must submit a supporting brief and evidence (affidavits, deposition excerpts, or other documents) in support of allegations of fact. (Emphasis supplied.)

The present motion is not in the motion and memorandum form (two separate documents) as required by the aforementioned rule.

WHEREFORE,

IT IS ORDERED that Plaintiffs' Motion to Compel Discovery and Impose Sanctions Under Rule 37 [docket no. 38] be, and it is hereby, **DENIED** without prejudice.

IT IS FURTHER ORDERED that in the event Plaintiffs submit and serve on opposing counsel a properly drafted motion and memorandum within ten (10) days of the date of this Order, the Court will consider the motion.

FINALLY, IT IS ORDERED that no Response to the anticipated motion in the preceding paragraph shall be filed unless requested by the Court.


UNITED STATES MAGISTRATE JUDGE